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Supreme Court of the United States

October Term, 1963.

No. 1110

PAN AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

versus

CARLOS MANUEL THEYE y AJURIA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1963.

No. .....

PAN AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

versus

CARLOS MANUEL THEYE y AJURIA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Louisiana. This judgment affirms a summary final decree for Respondent and holds that certain laws of the Republic of Cuba are not binding on Cuban citizens.

OPINIONS BELOW.

The opinion of the Supreme Court of Louisiana is reported at 161 So. (2) 70 and is attached hereto as Appendix A.

JURISDICTION.

Jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1257 (3). The decision of the Supreme Court of Louisiana did not become final until 15 days after rendition, that is, on March 10, 1964.

QUESTION PRESENTED.

Prior to 1960, Petitioner, Pan American Life Insurance Company doing business in Cuba, issued a life insurance policy to Respondent, a Cuban citizen, living in Cuba. In 1960, the recognized government of the Republic of Cuba enacted certain laws which expropriated Petitioner's Cuban assets and substituted the Cuban State as the obligor on Petitioner's insurance policies issued to Cuban citizens. Thereafter, Respondent sued Petitioner in the Louisiana courts, contending that Petitioner was still the obligor on the policy it had issued to him. Under these circumstances did the Louisiana courts err in refusing to recognize and apply the Cuban law even though Respondent was and is a Cuban citizen, and Petitioner's reserves on Respondent's policy were, in fact, expropriated by the Cuban State?

CUBAN LAWS INVOLVED.

On July 6, 1960, the Republic of Cuba promulgated Law No. 851 (R. 12). Pursuant to this Law, Resolution No. 3 was promulgated on or about October 24, 1960 (R. 12). This Resolution provides in pertinent part:

> "WHEREAS, the Imperialist interests whose representatives control the Government of the

United States of North America, in their intention to utilize every means which they consider effective to impede the consolidation of the Cuban Revolution, have continued committing aggressions, every day more unscrupulous and criminal, against the economy of the nation.

WHEREAS: Among the multiple measures adopted by the Government of the United States of North America, there stands out for its exceptional aggressiveness that of the general embargo on exportations from that country to Cuba with the intention of strangling our economy.

WHEREAS: That measure in addition to violating the most elemental standards of international existence, constitutes an act of political coercion with which it pretends uselessly to weaken the popular force of the Cuban Revolution by creating difficulties for national supplies.

WHEREAS: It is evident that this conduct of the Government of the United States of North America reveals the desperation and impotence of imperialism conducted by that Government, each day with more virulence, to employ the most unjust aggressions against our country.

WHEREAS: It is the duty of the Revolutionary Government to defend the economy of the country.

WHEREAS: Moreover, it is fundamental for the liberation and economic development of our country that the North American commercial and industrial firms be liquidated which presently constitute the

remainder in our country of the financial capital of that country.

THEREFORE: In use of the powers with which we are vested, in accordance with the provisions of No. 31 of June (sic July), 1960.

RESOLVED

FIRST: There is declared the nationalization by means of forced expropriation, and, consequently, there are adjudged in favor of the Cuban State in full dominium all the properties and firms located in the National Territory and the rights and actions resulting from the exploitation of these properties and concerns which are the property of natural and juridical persons, nationals of the United States of America or operators of firms in which nationals of that country have a predominant interest, as follows:

* * * *

Group XX—Insurance Companies
Pan-American Life Insurance Co.

* * * * *

SECOND: Therefore, the Cuban state is declared subrogated in place and grade of the natural and juridical persons referred to in the preceding section with respect to the properties, rights and rights of action mentioned, as well as the assets and liabilities constituting the capital of the concerns referred to.

"THIRD: It is declared that these forced expropriations are effected for reasons of necessity and public use and national interest mentioned in the Whereas clauses of this Resolution."

STATEMENT OF THE CASE.

The facts are stated as follows in the Supreme Court of Louisiana's decision below:

> "Carlos Manuel Theye Y Ajuria, a Cuban national now residing in Florida,[1] instituted proceedings in the district court in Orleans Parish against Pan American Life Insurance Company, a Louisiana corporation, to recover the cash surrender value of an insurance policy issued by the defendant on the life of the plaintiff, which under the terms of the contract, had been converted into a fully paid-up policy in June, 1942. He also prayed for 'penalties and attorneys' fees.
>
> In answer to the plaintiff's petition, the defendant (1) denied the policy was a Louisiana contract and governed by the laws of this state, insisting that the policy was in fact delivered to him by its agent in Cuba whose laws govern the performance thereof; and maintained (2) that even if the original contract had been consummated in Louisiana, its situs had been removed to Cuba by the actions of the parties, the defendant having paid and the plaintiff having received the persistency bonus in 1948 in Cuban pesos, and the plaintiff having made and repaid in pesos three

[1] Plaintiff had lived in Cuba until November, 1960, when he was forced to flee after Castro came to power because of his political beliefs.

loans on the policy in 1948, 1950, and 1952; and (3) under our "Act of State" doctrine and certain provisions of the International Monetary Fund, commonly known as the Bretton Woods Agreement, a treaty to which Cuba and the United States are signatories, the laws of Cuba passed since the execution of the policy involved herein govern.

Whereupon, the plaintiff filed a motion for a summary judgment on the pleadings, exhibits, interrogatories and defendant's response thereto; the motion was granted and the trial judge awarded the plaintiff the sum of $7,090 as the cash surrender value of the policy. This judgment was reversed by the Court of Appeal, Fourth Circuit, dismissing plaintiff's suit, 154 So. 2d 450. The matter is now before us for review on a writ of certiorari granted on the application of the plaintiff.

The record reveals that on May 14, 1928, when plaintiff was thirty-one years of age, he applied for a life insurance policy through the defendant's

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In 1948 the Batista government passed Law No. 13 which provided for the creation of the National Bank of Cuba and also that after 1951 only the Cuban pesos would be recognized as legal tender. The Monetary Law of 1951 required all contracts payable to or by Cuban nationals be paid in pesos and after Castro's rise to power, on September 29, 1960, Law 568 was promulgated, prohibiting foreign corporations doing business in Cuba from making payments or crediting the accounts of Cuban nationals with any sums available to them except in Cuba, without the express authorization of the National Bank of Cuba. In June, 1960, Law No. 851 was adopted, providing for the nationalization through expropriation of all property in Cuba owned by United States nationals and pursuant to Resolution Number 3, passed October 26, 1960, defendant's operations were expropriated and an administrator appointed by the Cuban government was placed in charge thereof.

agent in Havana, to which was attached payment of the first annual premium. In due time the application was received and accepted by the defendant in its home office in New Orleans; the policy was issued on May 2, 1928, and mailed to its said agent in Cuba to be delivered to the plaintiff. All other annual premiums were also paid in United States currency until 1942 when the policy was converted into a paid-up one.

It is stipulated in the policy, a copy of which was attached to the plaintiff's petition, that all premiums are payable in advance at the home office of the defendant and upon presentation of the policy, it would * * * pay at its Home Office in New Orleans, Louisiana, U.S.A.; and upon presentation of due proof of the death * * * of the insured, the proceeds of the policy to the beneficiary.

The trial judge in his reasons for judgment stated that the obligation under the contract at the time it was issued and at the time it was converted was governed by the laws of the state of Louisiana and the laws and decrees of the Republic of Cuba passed subsequent to these events could have no effect on the obligation that existed previously. In reversing the judgment of the district court, the Court of Appeal was of the opinion that the Bretton Woods Agreement prohibited this country from enforcing contracts which would frustrate exchange control regulations of another member of the Agreement, and that the Cuban law requiring that payments between the insured and the insurer be made in Cuba in pesos was applicable to the policy under consideration, consequently the plaintiff was not entitled to recover the cash

surrender value of the policy from the defendant in any of the United States."

In affirming the judgment of the trial judge, the Supreme Court of Louisiana reasoned, in part, as follows:

"A study and analysis of the policy and exhibits contained in the record leave no room for speculation as to the intention of the parties which was stated in clear and unambiguous language; the plaintiff obligated himself to pay all premiums due on the policy at the home office of the defendant; and after the policy was converted into a fully paid-up one, it was the obligation of the defendant company to pay to the plaintiff the cash surrender value thereof upon his surrender of the policy at its office in New Orleans; all transactions were obviously intended to be negotiated in American dollars."

* * * *

"We think, therefore, the trial judge properly concluded that the laws and decrees of the Republic of Cuba passed subsequent to the date the policy became a paid-up policy can have no effect upon the obligation which existed at that time."

Citing as authority, among other cases, *Menendez Rodriguez vs. Pan American Life Insurance Co.*, 5 Cir., 311 F. 2nd 429, 432, and *Menendez vs. Aetna Insurance Company*, 5 Cir., 311 F. 2nd 437 in which cases this Court (Cases Nos. 67 and 68, October Term, 1963) vacated the judgments of the United States Court of Appeal, Fifth Circuit, and remanded the cases for

further consideration in the light of *Banco Nacional de Cuba vs. Sabbatino*, No. 16, October Term, 1963, 84 Sup. Ct. 923, 11 L.ed. 2nd 804.

In spite of the fact that this Court had under consideration the "Act of State" doctrine growing out of the acts of the Castro government of Cuba in *Banco Nacional de Cuba vs. Sabbatino*, 84 S. Ct. 923, 11 L.ed. 2nd 804, argued to this Court on or about October 23, 1963, the Court below concluded its opinion saying:

> "We find untenable the suggestion of counsel that this court should await the United States Supreme Court's action in regard to several cases pending before it on applications for writs, and wherein the applicability of the 'Act of State' doctrine in controversies similar to the case at bar is involved, and would, therefore, be controlling, before we resolve this matter. To require this refugee, who is in a strange land and possibly in dire need, to wait indefinitely for a final adjudication of his claim would be a travesty on justice; and we think it would be folly to suggest that he return to Cuba, for his effort to secure relief there might well wind up in *his* liquidation."

As shown by the above quoted excerpt from the opinion below, the question here presented was both timely raised and actually decided by the Louisiana Supreme Court.

REASONS FOR GRANTING THE WRIT

Petitioner urges the Court to grant this petition for a writ of certiorari to the Supreme Court of Louisiana for the following reasons:

1. This case is equally as important in the field of international law as the *Sabbatino* case in which this Court granted certiorari and enforced the "Act of State" doctrine, or the cases of *Menendez Rodriguez vs. Pan American Life Insurance Company* and *Menendez vs. Aetna Insurance Company*, Nos. 67 and 68 respectively, decided on April 6, 1964 in which writs of certiorari were granted and the judgments of the U. S. Court of Appeals for the Fifth Circuit were vacated and the causes remanded for further consideration in the light of *Banco Nacional de Cuba vs. Sabbatino*, 84 S. Ct. 923, 11 L.ed. 2nd 804.

As in those cases, this case too involves the effect of Cuban expropriation of American companies and their outstanding liabilities to Cuban Nationals suing in the United States.

Pan American Life alone has outstanding more than 6,000 policies issued through its Havana Branch. It is not possible to know how many such policy holders are among the hundreds of thousands of Cubans now resident in the United States. However many are known to be in this country and many suits have been filed by them in the courts of the several states as well as in the United States District Courts.

Suits against other American life insurance companies in the same position as Petitioner are now pending in Miami, Jacksonville, Galveston, Shreveport, Raleigh, Newark, Houma, Louisiana, and San Juan.

It is rumored that hundreds of such suits are about to be filed in the Miami and New York areas and

such claims are being actively solicited by former Cuban lawyers through newspaper advertisements in Spanish-language newspapers in Miami and San Juan.

The pending suits involve all kinds of policy claims, including death claims, suits for cash surrender values of policies, annuity benefits and endowment proceeds, as well as actions to force insurers to accept premiums and maintain policies in force.

2. The decision of the Louisiana Supreme Court is in direct conflict with this Court's holding in *Banco Nacional de Cuba vs. Sabbatino*, 84 S. Ct. 923, 11 L.ed. 2nd 804; *Pan American Life Insurance Company vs. Menendez Rodriguez*, No. 67, October term, 1963 and *Aetna Insurance Company vs. Menendez*, No. 68, October term, 1963, both decided on April 6, 1964.

The decision of these federal questions should be uniform throughout the country and the only way such uniformity can be achieved is by a decision of this Court.

3. Pan American Life Insurance Company also has pending in this Court a petition for certiorari in the cases of *Pan American Life Insurance Company vs. Augustin Goytisolo Recio*, No. 673, October term, 1963 in which the identical questions here presented are involved, as well as the case of *Pan American Life Insurance Company vs. Marie Lorido*, No. 379-380, October term, 1963 where only a slightly different factual situation was involved.

Grant of certiorari here would enable this Court to settle almost all if not quite every facet of the international problem created by the Cuban expropriation.

CONCLUSION.

ectfully submitted that this petition for a
iorari be granted.

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CERTIFICATE.

certify that copies of the above and foregoing
been served on opposing counsel this
y, 1964.

APPENDIX A.

Monday, Feb. 24, 1964.

SUPREME COURT OF LOUISIANA.

No. 46,902.

CARLOS MANUEL THEYE Y AJURIA

v.

PAN AMERICAN LIFE INSURANCE COMPANY.

In re: CARLOS MANUEL THEYE Y AJURIA, APPLYING FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL FOR THE FOURTH CIRCUIT.

FOURNET, Chief Justice.

Carlos Manuel Theye Y Ajuria, a Cuban national now residing in Florida[1], instituted proceedings in the district court in Orleans Parish against Pan American Life Insurance Company, a Louisiana corporation, to recover the cash surrender value of an insurance policy issued by the defendant on the life of the plaintiff, which under the terms of the contract, had been converted into a fully paid-up policy in June, 1942. He also prayed for penalties and attorneys' fees.

In answer to the plaintiff's petition, the defendant (1) denied the policy was a Louisiana contract and governed by the laws of this state, insisting that the —

[1] Plaintiff had lived in Cuba until November, 1960, when he was forced to flee after Castro came to power, because of his political beliefs.

policy was in fact delivered to him by its agent in Cuba whose laws govern the performance thereof; and maintained (2) that even if the original contract had been consummated in Louisiana, its situs had been removed to Cuba by the actions of the parties, the defendant having paid and the plaintiff having recevied the persistency bonus in 1948 in Cuban pesos, and the plaintiff having made and repaid in pesos three loans on the policy in 1948, 1950, and 1952; and (3) under our "Act of State" doctrine and certain provisions of the International Monetary Fund, commonly known as the Bretton Woods Agreement, a treaty to which Cuba and the United States are signatories, the laws of Cuba[2] passed since the execution of the policy involved herein govern.

Whereupon, the plaintiff filed a motion for a summary judgment on the pleadings, exhibits, interrogatories and defendant's response thereto; the motion was granted and the trial judge awarded the plaintiff the sum of $7,090 as the cash surrender value of the policy. This judgment was reversed by the Court of Appeal, Fourth Circuit, dismissing plaintiff's suit, 154

[2] In 1948 the Batista government passed Law No. 13 which provided for the creation of the National Bank of Cuba and also that after 1951 only the Cuban pesos would be recognized as legal tender. The Monetary Law of 1951 required all contracts payable to or by Cuban nationals be paid in pesos and after Castro's rise to power, on September 29, 1959, Law 568 was promulgated, prohibiting foreign corporations doing business in Cuba from making payments or crediting the accounts of Cuban nationals with any sums available to them except in Cuba, without the express authorization of the National Bank of Cuba. In June, 1960, Law No. 851 was adopted, providing for the nationalization through expropriation of all property in Cuba owned by United States nationals and pursuant to Resolution Number 3, passed October 26, 1960, defendant's operations were expropriated and an administrator appointed by the Cuban government was placed in charge thereof.

So. 2d 450. The matter is now before us for review on a writ of certiorari granted on the application of the plaintiff.

The record reveals that on May 14, 1928, when plaintiff was thirty-one years of age, he applied for a life insurance policy through the defendant's agent in Havana, to which was attached payment of the first annual premium. In due time the application was received and accepted by the defendant in its home office in New Orleans; the policy was issued on May 22, 1928, and mailed to its said agent in Cuba to be delivered to the plaintiff. All other annual premiums were also paid in United States currency until 1942 when the policy was converted into a paid-up one

It is stipulated in the policy, a copy of which was attached to the plaintiff's petition, that all premiums are payable in advance at the home office of the defendant and upon presentation of the policy, it would "* * * pay at its Home Office in New Orleans, Louisiana, U.S.A., and upon presentation of due proof of the death * * *" of the insured, the proceeds of the policy to the beneficiary.

The trial judge in his reasons for judgment stated that the obligation under the contract at the time it was issued and at the time it was converted was governed by the laws of the state of Louisiana and the laws and decrees of the Republic of Cuba passed subsequent to these events could have no effect on the obligation that existed previously. In reversing

the judgment of the district court, the Court of Appeal was of the opinion that the Bretton Woods Agreement prohibited this country from enforcing contracts which would frustrate exchange control regulations of another member of the Agreement, and that the Cuban law requiring that payments between the insured and the insurer be made in Cuba in pesos was applicable to the policy under consideration, consequently, the plaintiff was not entitled to recover the cash surrender value of the policy from the defendant in any of the United States.

It is the settled jurisprudence of this state, a rule of law universally obtaining, that "An insurance policy is a contract and the rules established for the construction of written instruments apply to contracts of insurance." *Nyman v. Monteleone-Iberville Garage*, 211 La. 375, 30 So. 2d 123 and authorities cited therein. And "* * * all the authorities agree that the law of the place of contract—lex loci contractus—as distinguished from the law of the forum, governs. The lex loci contractus, it is said, becomes as much a part of the contract as if specifically incorporated therein; and although the interpretation of the language of a contract of insurance is pre-eminently a question as to the intention of the parties, in the absence of evidence of a contrary intention the parties must be held to have contemplated the application of that law to the terms of their agreement, for the law of the state where a contract of insurance is made is necessarily within the contemplation of the parties and must be looked to in ascertaining the terms by which they agreed to be bound.

"When the question of the place where a contract of insurance was made is solved, the determination of the questions as to the construction to be placed upon the terms of the contract and as to the validity thereof and of the laws which are to govern such construction and validity is comparatively easy because it is an almost universal rule that the contract of insurance must be governed by the law of the state where such contract is finally consummated. * * *" 29 Am. Jur., Insurance, Sec. 30 and 31.

Under the express provisions of the Revised Civil Code, to be found in Section 5 of Chapter 3 of Title IV, under the heading "Of the Interpretation of Agreements", it is provided "That Courts are bound to give legal effect to all * * * contracts according to the true intent of all the parties," and such "* * * intent is to be determined by the words of the contract, when these are clear and explicit and lead to no absurd consequences." Article 1945. In arriving at the intent of the parties "All clauses of agreements are interpreted the one by the other, giving to each the sense that results from the entire act." Article 1955. It is only when a clause is susceptible of two interpretations that it must be understood in the sense in which it may have some effect rather than a sense that would render it nugatory (Article 1951), and only in doubtful cases that the agreement must be interpreted against the party who contracted the obligation. Article 1957.

A study and analysis of the policy and exhibits contained in the record leave no room for speculation as

to the intention of the parties which was stated in clear and unambiguous language; the plaintiff obligated himself to pay all premiums due on the policy at the home office of the defendant, and after the policy was converted into a fully paid-up one, it was the obligation of the defendant Company to pay to the plaintiff the cash surrender value thereof upon his surrender of the policy at its office in New Orleans; all transactions were obviously intended to be negotiated in American dollars.

This is the interpretation the defendant itself placed on the contract when it wrote to all of its policyholders in Cuba advising them in part: "*At the time your policy was issued the laws of Cuba permitted the Pan American Life Insurance Company to issue it PAYABLE in United States currency and to receive payment of premiums in Cuba in that currency.* The Republic of Cuba has now enacted Law 13 of 1948 and under its terms the Government of that country has issued Decree No. 1348 of 1951 providing that the Cuban National currency shall be the only legal tender currency in Cuba. It is therefore impossible for us to continue to accept payment of U.S. Dollars in Cuba and *if you desire to continue the payment of your premiums in dollars they must be paid to the Home Office in New Orleans, Louisiana, as required by your contract.*" (Emphasis added.)

We think, therefore, the trial judge properly concluded that the laws and decrees of the Republic of Cuba passed subsequent to the date the policy became

a paid-up policy can have no effect upon the obligation which existed at that time.

The contention of the defendant that even if the original contract had been consummated in Louisiana the situs thereof had been removed to Cuba when the defendant paid and the plaintiff received the persistency bonus in 1948 in pesos and the plaintiff received pesos on three loans he made on the policy in 1948, 1950 and 1952 and liquidated them with Cuban pesos, is clearly without merit. There is nothing in these transactions that would indicate that the plaintiff in so acting either in receiving the bonus or making the loans intended to abrogate or modify his contract with the defendant Company. Moreover, the Company has failed to indicate any such intention on its part in the manner required by the contract, which specifically provides under the heading of "CONSTRUCTION OF CONTRACT" the policy could neither "* * * be changed nor modified except with the written consent of the Company signed by the President, Vice-President, Secretary or Actuary. * * *"

Counsel's last argument is that the effect of Article VIII, Sec. 2 (b)[1] of the Articles of Agreement of the International Monetary Fund, which were formulated

[1] "Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member. In addition, members may, by mutual accord, cooperate in measures for the purpose of making the exchange control regulations of either member more effective, provided that such measures and regulations are consistent with this Agreement." Article VIII, Sec. 2 (b) International Monetary Fund.

at the United Nations Monetary and Financial Conference in July, 1944 at Bretton Woods, New Hampshire, signed at Washington December 27, 1945, accepted by the United States of America December 20, 1945, and which became effective December 27, 1945, is to divest the courts of the United States of authority to enforce the obligations of the plaintiff's contract.

Conceding that Cuba had adopted the Articles thereof as part of its national law as alleged by the defendant, an exhaustive study of the Bretton Woods Agreement, as well as all authorities relied on by the defendant, fails to show where the Agreement or any of the cases are controlling under the particular facts of the case at bar inasmuch as a contract payable in the state of Louisiana in United States currency is not a foreign exchange contract.

In *Blanco v. Pan American Life Insurance Company*, 221 F. Supp. 219, see also 311 F 2d 424, the same defenses to claims by policyholder Blanco and other Cuban refugees were urged therein as here, and in support thereof, the defendant cited the Court of Appeal opinion in the case at bar. That court concluded, however, that Federal courts are not bound by state decisions in interpreting a federal question and disposed of the matter by holding the Bretton Woods Agreement had no applicability in that case because the Cuban government lost whatever jurisdiction it possessed over not only the subject matter of the litigation but also over the persons of the plaintiffs when they fled from Cuba, became alien residents of the United States, po-

litical citizens of nowhere, but civil citizens of Florida as they were domiciled there. The court further remarked "* * * these laws (relied on by defendant) do not apply to cover the situation of a Cuban national enforcing an executory contract in the forum of another jurisdiction according to the terms of an obligation existing prior to the passage of those laws. Further, we do not believe that such laws and decrees can have any force and effect over the persons of these litigants who are not only without Cuba, but, as refugees, are not subject to its in personam jurisdiction. * * *"

Moreover, courts, including those of this country as well as those of foreign jurisdictions, in interpreting contracts involving matters affected by the Bretton Woods Agreement are uniform in their holding that the laws of the state or nation where the parties intended the contract to be performed govern. *Rodriguez v. Pan American Life Insurance Company*, 311 F. 2d 432; *Pan American Life Insurance Company v. Recio*, 154 So. 2d 197 (Florida); *Pan American Life Insurance Company v. Raij*, 156 So. 2d 785 (Florida); *Menandez v. Aetna Insurance Company*, 311 F. 2d 432; *Ahmen Pgy. Naguib v. Heirs of Moise Abner*, abstract appears in J. T. M., No. 4003, Nov. 24/25, 1948; *Kraus v. Zivostenska Banka*, 64 N. Y. Supp. 2d 208, 187 Misc. 681; *Cermak, et al. v. Bata Akciova Spolecnost*, 80 N. Y. Supp. 2d 782; *Frankman v. Ango-Prague Credit Bank* (London office) 1 All E. R. 337; *Frankman v. Ango-Prague Credit Bank*, 2 All E. R. 1025; *Zivnostenska Banka National Corporation v. Frankman*, 2 All E. R. 671.

We find untenable the suggestion of counsel that this court should await the United States Supreme Court's action in regard to several cases pending before it on applications for writs, and wherein the applicability of the "Act of State" doctrine in controversies similar to the case at bar is involved, and would, therefore, be controlling, before we resolve this matter. To require this refugee, who is in a strange land and possibly in dire need, to wait indefinitely for a final adjudication of his claim would be a travesty on justice, and we think it would be folly to suggest that he return to Cuba, for his effort to secure relief there might well wind up in *his* "liquidation."

Defendant's contention that this is not a case for summary judgment, as well as the argument in support thereof, is unimpressive under the facts of the case.

We note that in the very last paragraph of their brief plaintiff's counsel call attention to the fact the judgment of the trial court should be reinstated "with allowance for attorney fees and expenses incurred by" plaintiff. No authority in support of these claims has been cited, and we know of none. Hence, this request must be disallowed.

For the reasons assigned, the judgment of the district court is affirmed. Defendant is to pay all costs.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 1110

PAN AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

versus

CARLOS MANUEL THEYE Y AJURIA,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Louisiana.

BRIEF FOR RESPONDENT IN OPPOSITION.

May It Please the Court:

The Act of State doctrine as announced by this Court in the recent decision of *Banco Nacional de Cuba v. Sabbatino*, No. 16, October Term, 1963, 84 S. Ct. 923, 11 L. Ed. 2d 804, has one limitation. The doctrine has no extra-territorial effect but limits the *respect* due to the act of the foreign sovereign to that done "within its own territory".

ARGUMENT

Although there is similarity in the factual circumstances, i.e., a United States insurer of a foreign national, there is no conflict between the instant decision of the Louisiana Supreme Court and the per curiam decisions of this Court in *Aetna Insurance Company v. Menendez*, No. 68, October Term, 1963, 84 S. Ct. , 11 L. Ed. 2d 804, and *Pan American Life Insurance Co. v. Menendez Rodriguez*, No. 67, October Term, 1963, 84 S. Ct. , 11 L. Ed. 2d 804.

SITUS

The distinguishing feature which dissolves the apparent conflict is *situs*. In *Rodriguez* and *Menendez*, the contracts were executed and performable in Cuba and, therefore, had *situs* in Cuba. The policy herein was issued, executed, delivered and performable in Louisiana, all premiums were paid in United States currency and, as found by the highest court of Louisiana, the contract had *situs* in Louisiana and, therefore, was governed by the laws of Louisiana.

EXTRATERRITORIALITY

Prior to the pronouncement of the *Sabbatino* decision, one of the leading authorities in the field of international law was the decision of *Dougherty v. Equitable Life Assurance Soc'y. of United States*, 266 N. Y. 71, 193 N.E. 897. On facts similar to the "insurance cases" in litigation at this time involving the interpretation of the Act of State doctrine, the New York Court of Appeals made an observation which is singularly appropriate herein:

> "* * * Naturally their acts could not effect contracts made in New York nor contracts to be performed here according to New York law."
>
> 266 N. Y. 71, 78.

The instant policy is a fully-paid contract of insurance with no indebtedness thereon. The sole obligor under the contract is a corporation of these United States and its performance thereunder is governed by Louisiana law under which it was created. It is inconceivable and beyond the comprehension of respondent how a foreign sovereign, without any connexity to the contract, could abrogate the obligations or the provisions of the contract.

To enlarge the scope of the Act of State doctrine by giving it effect in purely domestic contracts would render vulnerable every law of this nation concerning private and contractual rights. All transactions in this country with foreign nationals would be endangered because the foreigner, after accepting the benefits of an agreement, could rescind and absolve himself from performance by pleading prohibition of the obligation under foreign law.

STATE LAWS AS RULES OF DECISION

Except in matters governed by the Constitution or by Acts of Congress, the law to be applied in any case is the law of the State. *Erie v. Tompkins*, 304 U.S. 64. Where a contract which is executed and performable within a state is interpreted by the highest court in that state, then that decision, in absence of any federal question, is binding upon this Court. *Equitable Life Assurance Society v. Brown*, 213 U.S. 25, *Kahlin v. New York Life Insurance Co.*, 304 U.S. 202. There is no federal question here.

CONCLUSION

It is submitted that a contract which has situs in the United States as the Supreme Court of Louisiana here found, may not be modified or abrogated by the act of a

foreign sovereign. The application for the writ of certiorari should be denied.

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CERTIFICATE

I hereby certify that copies of the above and foregoing brief have been served upon opposing counsel this day of June, 1964.

LEON SARPY